The Examiner has restricted the invention under 35 U.S.C. §121 into the following groups:

I. Claims 1-20, drawn to a wastewater separator, classified in class 210, subclass 532.2.

II. Claims 21-30, drawn to a wastewater pretreatment method, classified in class 210, subclass 800.

Applicants provisionally elect to prosecute Group I, claims 1-20, with traverse with respect to Group II.

The Examiner has stated that the inventions of Groups I and II are distinct from one and the other because inventions of Groups I and II are related as process and apparatus for its practice. In an attempt to show that the product and process claims are distinct inventions, the Examiner alleges that the apparatus as claimed can be used to carry out a different process such as to separate food products or pharmaceutical mixtures.

Applicants acknowledge that under MPEP §806.05(e), inventions are distinct if either or both of the following can be shown that:

(1) the process as claimed can be practiced by another materially different apparatus or by hand; or

(2) the apparatus as claimed can be used to practice another and materially different process.

According to MPEP §803, the restriction is proper only if the claims are able to support separate patents and they are either independent or distinct (806.05-806.05(g)). Section 803 also states that even if distinct or independent claims exist, examination on the merits is required providing the search can be made without serious burden.

In the instant case, it is apparent from a thorough reading of the specification and the claims, that the apparatus and the process are one invention. References which disclose the process of Group II would clearly be cited as prior art against those apparatus claims in Group I. The Examiner would certainly feel obligated to consider such disclosure relevant and would not hesitate to cite references relating to one group against the other under 35 U.S.C. §103. Thus, the Examiner would search the class of Group II to find a suitable reference to the apparatus disclosed in Group I and vice versa. For those reasons, Applicants maintain that a co-extensive field of search seems virtually mandated and would not present an undue burden.

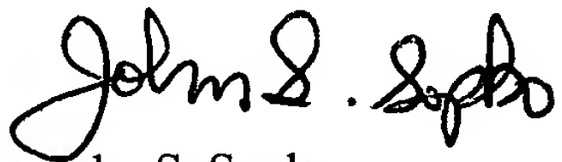
Furthermore, the mere fact of separate classifications is not determinative of a proper restriction. Separate classification is merely a Patent Office convenience for the purpose of locating pertinent art. It is clear, therefore, that although diversity of classification may be the considered factor in a decision to make a restriction requirement, it should not be a controlling one. The Examiner may not properly rely on separate classifications to support an allegation of separate status in the art. The Examiner has also not made any further allegations as to why this restriction is proper.

Moreover, the Examiner's assertion that the claimed apparatus for wastewater separation can be used to separate food products or pharmaceutical mixtures is clearly not based upon the recitations of the claims. A review of the recitations of claims 1-20 and 21-30 clearly mandates that the apparatus and the method are one invention and are not directed towards such use as asserted by the Examiner.

For the reasons set forth above, Applicants respectfully request that the requirement for restriction be modified and consideration of all the claims in Groups I and II be commenced.

Should the Examiner have any questions, the Examiner is respectfully invited to contact the undersigned attorney at the telephone number set forth below.

Respectfully submitted,



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